Rosli bin Saad v SG Concrete Products (M) Sdn Bhd and another appeal

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS P-04(W)-259–06 OF 2023 AND P-04(W)-260–06 OF 2023
SUPANG LIAN, LIM CHONG FONG JJCA AND AHMAD FAIRUZ J
6 NOVEMBER 2024

Civil Procedure — Appeal — Procedure — Preliminary objection — Appeal process after an award of an Industrial Court — Whether proceedings commenced in Industrial Court before coming into operation of Industrial Relations (Amendment) Act 2020 ('the Amendment Act') — Whether right to appeal under s 33C of Industrial Relations Act 1967 applicable — Whether proper procedure was to file judicial review proceedings

The appellants were both employed as lorry drivers with the respondent in 1996. In 2020, the appellants filed a formal complaint with the Labour Department that the respondent had flouted the Minimum Wages Order 2012, 2017, 2018 and 2020. Following this, the respondent terminated the appellants on the grounds that they had stayed away from workplace for four consecutive days without reasonable excuse and therefore were in breach of s 15(2) of the Employment Act 1955. This led to the appellants filing a representation to the Director General of Industrial Relations ('DGIR') under s 20(1) of the Industrial Relations Act 1967 ('Act') seeking reinstatement. As the matter could not be resolved, the Minister of Human Resource ('the Minister') referred the matter to the Industrial Court. The Industrial Court disagreed with the respondent that the appellants had stayed away from workplace without reasonable excuse and held that the dismissal of the appellants was without just cause or excuse. Dissatisfied, the respondent appealed. At the High Court, the appellants raised a preliminary objection on the issue of whether the respondent ought to have filed a judicial review instead of an appeal at the High Court. The High Court judge ('HMT') dismissed the preliminary objection and held that the dismissal of the appellants was made with just cause and excuse. In the opening submissions in the present appeal, the appellant again raised the preliminary issue contending that contended matter should have been brought by way of a judicial review instead of an appeal to the High Court. This was because the representation was referred to the Industrial Court by the Minister vide his referral dated 20 April 2021.

Held, allowing appeals with costs:

(1) The Industrial Relations (Amendment) Act 2020 ('Act A1615') introduced several major changes to the Act. The amendments to the Act

came into force on 1 January 2021. Where the DGIR was satisfied that the representation could not be settled by conciliation or any other steps that would resolve the complaint of the aggrieved person, the DGIR shall then take steps to refer the representation to the Industrial Court for determination. The power to refer the representation lay solely with the DGIR. The word 'shall' connoted a mandatory requirement for the DGIR to refer the representation to the Industrial Court. This was in contrast to the unamended s 20(3) where the Minister in exercising his discretion 'may if he thinks fit' refer representations to the Industrial Court. The Act had now provided a clear appeal process after an award was made by the Industrial Court. The appeal process was to the High Court and the procedure for such appeal would be that of an appeal from the Sessions Court to the High Court (see paras 10 & 12–16).

(2) Section 35 of Act A1615, the saving and transitional provisions, states that where any representation for reinstatement was made under s 20 of the Act before the coming into force of the amended Act, it shall proceed under the unamended Act. If the representation for reinstatement was made before 1 January 2021 and the Minister referred it before 1 January 2021, there was no ambiguity. Likewise, if the representation and referral were made after 1 January 2021. If the scenario was similar to the present case where the representation for reinstatement was made before 1 January 2021 and the representation to the Industrial Court was made after 1 January 2021, by application of s 35 of Act A1615, the unamended Act was to apply. The determining factor was when the said representation for reinstatement was made to the Department of Industrial Relations under s 20 of the Act. Therefore, it was proper for the Minister and not the DGIR to make the referral to the Industrial Court (see paras 22–26).

(3) The HCJ had made a factual error when he said the referral by the Minister to the Industrial Court was on 22 October 2020. That was the date on which the appellants were dismissed. The HCJ was also in error when he placed emphasis on the timing of the award. Section 35 of Act A1615 did not cater for a situation where an award was made after the amended Act came into force. The HCJ had therefore imported a provision that was not found in the saving and transitional provisions of Act A1615 and made a ruling that any challenge of an award after 1 January 2021 must be by way of an appeal (see paras 28–30).

(4) The critical issue was the timing of the representation for reinstatement under s 20(1). If the said representation was made before the coming into force of the amended Act, the proceedings should be based on the unamended Act. As such, the HC was in error when he ruled that the appeal was properly laid before the High Court. Therefore, by applying judicial precedent and the provisions of s 35 of Act A1615, any challenge

against an award of an Industrial Court must be by way of a judicial review. The matter was erroneously brought before the High Court by way of an appeal. The HCJ fell into error when he entertained the appeal and went on to set aside the Industrial Court award. On this basis alone, the appeals ought to be allowed and the decision of the HCJ was set aside. The award of the Industrial Court was reinstated (see paras 31–32 & 35–36).

[Bahasa Malaysia summary

Perayu kedua-duanya bekerja sebagai pemandu lori dengan responden pada tahun 1996. Pada tahun 2020, perayu memfailkan aduan rasmi kepada Jabatan Tenaga Kerja bahawa responden telah melanggar Perintah Gaji Minimum 2012, 2017, 2018 dan 2020. Berikutnya, pihak responden telah menamatkan perkhidmatan perayu atas alasan bahawa mereka telah tidak hadir ke tempat kerja selama empat hari berturut-turut tanpa alasan yang munasabah dan oleh yang demikian telah melanggar peruntukan s 15(2) Akta Kerja 1955. Ini menyebabkan perayu memfailkan representasi kepada Ketua Pengarah Perhubungan Perusahaan ('KPHDN') di bawah s 20(1) Akta Perhubungan Perusahaan 1967 ('Akta') untuk memohon pelantikan semula jawatan. Oleh kerana perkara itu tidak dapat diselesaikan, Menteri Sumber Manusia ('Menteri') merujuk perkara itu ke Mahkamah Perusahaan. Mahkamah Perusahaan tidak bersetuju dengan responden bahawa perayu telah meninggalkan tempat kerja tanpa alasan yang munasabah dan berpendapat bahawa pemecatan perayu adalah tanpa sebab atau alasan yang adil. Tidak berpuas hati, responden merayu. Di Mahkamah Tinggi, perayu membangkitkan bantahan awal mengenai isu sama ada responden sepatutnya memfailkan semakan kehakiman dan bukannya rayuan di Mahkamah Tinggi. Hakim Mahkamah Tinggi ('HMT') menolak bantahan awal dan memutuskan bahawa pemecatan perayu dibuat dengan alasan dan sebab yang adil. Dalam hujah pembukaan dalam rayuan semasa, perayu sekali lagi membangkitkan isu awal dengan alasan bahawa perkara yang dipertikaikan sepatutnya dibawa melalui semakan kehakiman dan bukannya rayuan ke Mahkamah Tinggi. Ini kerana representasi telah dirujuk ke Mahkamah Perusahaan oleh Menteri melalui rujukannya bertarikh 20 April 2021.

Diputuskan, membenarkan rayuan dengan kos:

(1) Akta Perhubungan Perusahaan (Pindaan) 2020 ('Akta A1615') memperkenalkan beberapa perubahan besar kepada Akta tersebut. Pindaan Akta ini berkuat kuasa pada 1 Januari 2021. Jika KPHDN berpuas hati bahawa representasi tidak dapat diselesaikan melalui perdamaian atau sebarang langkah lain yang akan menyelesaikan aduan orang yang terkilan, KPHDN kemudiannya akan mengambil langkah untuk merujuk representasi itu kepada Mahkamah Perusahaan untuk penentuan. Kuasa untuk merujuk representasi terletak pada KPHDN.

A Perkataan 'hendaklah' bermaksud keperluan mandatori bagi KPHDN untuk merujuk representasi itu kepada Mahkamah Perusahaan. Ini berbeza dengan s 20(3) yang belum dipinda di mana Menteri dalam menggunakan budi bicaranya 'boleh jika difikirkannya patut' merujuk representasi kepada Mahkamah Perusahaan. Akta itu kini telah
B menyediakan proses rayuan yang jelas selepas awad dibuat oleh Mahkamah Perusahaan. Proses rayuan adalah kepada Mahkamah Tinggi dan prosedur untuk rayuan sedemikian adalah rayuan daripada Mahkamah Sesyen ke Mahkamah Tinggi (lihat perenggan 10 & 12–16).

C (2) Seksyen 35 Akta A1615, yang merupakan peruntukan pengecualian dan peralihan, memperuntukkan bahawa apabila sesuatu representasi bagi tujuan pelantikan semula telah dibuat di bawah s 20 Akta ini sebelum tarikh permulaan kuat kuasa Akta yang dipinda, maka representasi tersebut hendaklah diteruskan mengikut peruntukan Akta yang belum
D dipinda. Sekiranya representasi untuk pelantikan semula dibuat sebelum 1 Januari 2021 dan Menteri merujuknya sebelum 1 Januari 2021, tidak ada kesamaran. Begitu juga, jika representasi dan rujukan dibuat selepas 1 Januari 2021. Jika senario itu serupa dengan kes semasa di mana representasi untuk pelantikan semula dibuat sebelum 1 Januari 2021 dan
E representasi kepada Mahkamah Perusahaan dibuat selepas 1 Januari 2021, melalui permohonan s 35 Akta A1615, Akta yang tidak dipinda adalah terpakai. Faktor penentu adalah apabila representasi tersebut untuk pelantikan semula dibuat kepada Jabatan Perhubungan Perusahaan di bawah s 20 Akta. Oleh itu, ia adalah wajar bagi Menteri
F dan bukannya KPHDN untuk membuat rujukan kepada Mahkamah Perusahaan (lihat perenggan 22–26).

(3) HMT telah membuat kekhilafan fakta apabila beliau berkata rujukan oleh Menteri kepada Mahkamah Perusahaan adalah pada 22 Oktober
G 2020. Itu adalah tarikh perayu-perayu dibuang kerja. HMT juga terkhilaf apabila memberi penekanan pada masa awad itu. Seksyen 35 Akta A1615 tidak memenuhi situasi di mana awad dibuat selepas Akta yang dipinda berkuat kuasa. Oleh itu HMT telah mengimport peruntukan yang tidak terdapat dalam peruntukan Akta A1615
H Pengecualian dan Peralihan dan membuat keputusan bahawa sebarang cabaran bagi sesuatu awad selepas 1 Januari 2021 mestilah melalui rayuan (lihat perenggan 28–30).

(4) Isu kritikal adalah masa representasi untuk pelantikan semula di bawah s 20(1). Jika representasi tersebut dibuat sebelum Akta yang dipinda
I berkuatkuasa, prosiding hendaklah berdasarkan Akta yang tidak dipinda. Oleh itu, HC tersilap apabila memutuskan rayuan itu dikemukakan dengan betul di hadapan Mahkamah Tinggi. Oleh itu, dengan menggunakan duluan kehakiman dan peruntukan s 35 Akta A1615, sebarang cabaran terhadap awad Mahkamah Perusahaan mestilah

melalui semakan kehakiman. Perkara itu telah dibawa secara khilaf ke Mahkamah Tinggi melalui rayuan. HMT terkhilaf apabila meneliti rayuan dan mengetepikan awad Mahkamah Perusahaan. Atas dasar ini sahaja, rayuan sepatutnya dibenarkan dan keputusan HMT telah diketepikan. Awad Mahkamah Perusahaan telah dikembalikan semula (lihat perenggan 31–32 & 35–36).]

Cases referred to

Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors [2010] 3 MLJ 145; [2010] 5 CLJ 865, FC (refd)
Aneka Retail (M) Sdn Bhd v Mahkamah Perusahaan Malaysia & Ors [2023] MLJU 26, HC (refd)
Equatorial (M) Sdn Bhd v National Union of Hotel, Bar & Restaurant Workers & Anor [1984] 1 MLJ 363; [1984] 2 CLJ 6, FC (refd)
Sabah Banking Employees' Union v Sabah Commercial Banks' Association [1989] 2 MLJ 284; [1989] 2 CLJ 135; [1989] 1 CLJ Rep 148, SC (refd)

Legislation referred to

Employment Act 1955 s 15(2)
Industrial Relations Act 1967 ss 20(1), 20(1A), 20(3), 33A, 33C
Minimum Wages Order 2012 (repealed by Minimum Wages Order 2016)
Minimum Wages Order 2018 (repealed by Minimum Wages Order 2020)
Minimum Wages Order 2020 (repealed by Minimum Wages Order 2022)

Appeal from: *SG Concrete Products (M) Sdn Bhd lwn Rosli bin Saad dan satu lagi kes* [2023] MLJU 1870 (High Court, Pulau Pinang)

Ravi Nekoo (Nekoo) for the appellant.
Farah Irina bt Khairi Izwan (Farah, Farhana & Co) for the respondent.

Ahmad Fairuz J:

INTRODUCTION

[1] This appeal emanates from the decision of the Penang High Court which allowed the company SG Concrete Products (M) Sdn Bhd's ('the respondent') appeal. In so doing, the High Court reversed the finding of the Industrial Court and held that the dismissal of Rosli bin Saad and Rohlizan bin Abd Rahaman (collectively referred to as 'the appellants') were made with just cause and excuse. Aggrieved by the findings of the High Court, the appellants appealed to this court.

[2] Before us, both appeals were heard together.

A BACKGROUND FACTS

[3] The following facts, as narrated by the appellants are largely undisputed and lays the foundation that led to the appeal at the High Court:

B (a) the appellants were both employed as lorry drivers in the respondent. They had joined the respondent in 1996. They were paid a basic monthly salary of RM300 and trip allowance of RM30 each trip;

(b) they continued working for the next 16 years ie until 2012 with the same basic monthly salary stated in (a);

C

(c) around December 2012, the appellants protested about their salary. Following this protest, in January 2013, the respondent increased their salary from RM300 to RM400 and the trip allowance remained at RM30 each trip. However, this increment was still below the Minimum Wages Order 2012 which prescribed the minimum salary to be RM900 per month;

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(d) the respondent continued paying the said salary of RM400 each month for the next six years ie until January 2019. In January 2019, the appellants again protested, and the respondent increased their salary from RM400 to RM500 with the trip allowance too receiving an increment from RM30 to RM33 each trip. However, this salary was still below the Minimum Wages Order 2018, which prescribed the minimum salary of RM1,100 per month;

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(e) on 11 September 2020, the appellants filed a formal complaint with the Butterworth Labour Department that the respondent had flouted the Minimum Wages Order 2012, 2017, 2018 and 2020;

(f) following this, the respondent had taken a series of steps and eventually terminated the appellants on the grounds that they had stayed away from workplace for four consecutive days without reasonable excuse and therefore were in breach of s 15(2) of the Employment Act 1955;

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(g) the appellants had filed a representation to the Director General of Industrial Relations ('the DGIR') under s 20(1) of the Industrial Relations Act 1967 ('the Act') seeking reinstatement;

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(h) the matter could not be resolved, and the Minister of Human Resource ('the Minister') had referred the matter to the Industrial Court;

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(i) upon hearing the parties, the Industrial Court disagreed with the respondent that the appellants had stayed away from workplace without reasonable excuse and held that the dismissal of the appellants was without just cause or excuse; and

(j) dissatisfied, the respondent filed a notice of appeal to the High Court.

THE PRELIMINARY OBJECTION RAISED BY THE APPELLANTS AT THE HIGH COURT

[4] The appellants raised a preliminary objection on the issue of whether the respondent ought to have filed a judicial review instead of an appeal at the High Court. The High Court dismissed the preliminary objection.

THE PRELIMINARY ISSUE

[5] In his opening submissions before us, counsel for the appellants, Mr Ravi Nekoo informed the court that he wanted to raise a preliminary issue. It was the same objection he raised at the High Court.

[6] It was contended that the matter should have been brought by way of a judicial review instead of an appeal to the High Court. This was because the representation was referred to the Industrial Court by the Minister vide his referral dated 20 April 2021.

[7] Counsel relied on the decision of the High Court of Penang in *Aneka Retail (M) Sdn Bhd v Mahkamah Perusahaan Malaysia & Ors* [2023] MLJU 26 where the High Court held that the test as to whether it should be an appeal or a judicial review depends on who referred the representation to the Industrial Court.

[8] In contrast, counsel for the respondent, Ms Farah Irina bt Khairi Izwan contended that the matter was rightly brought before the court vide an appeal as the law now provides for an avenue for appeal. Furthermore, she contended that the referral was in fact made by the DGIR thus fulfilling the requirements of the Act.

OUR FINDINGS ON THE PRELIMINARY ISSUE

[9] It is important to trace the latest position of the law.

[10] The Industrial Relations (Amendment) Act 2020 (Act A1615) introduced several major changes to the Act. The amendments to the Act came into force on 1 January 2021. Suffice, for purposes of this appeal, only provisions relating to referrals of representations to the Industrial Court is focused on.

[11] The law as it stands, when dealing with representations by an aggrieved workman or person is found in s 20. It reads as follows:

20 Representations on dismissals

A (1) Where a workman, irrespective of whether he is a member of a trade union of workmen or otherwise, considers that he has been dismissed without just cause or excuse by his employer, he may make representations in writing to the Director General to be reinstated in his former employment; the representations may be filed at the office of the Director General nearest to the place of employment from which
B the workman was dismissed.

[12] Where the DGIR is satisfied that the representation cannot be settled by conciliation or any other steps that would resolve the complaint of the aggrieved person, the DGIR shall then take steps to refer the representation to
C the Industrial Court for determination. This is found in s 20(3) where it reads:

(3) Where the Director General is satisfied that there is no likelihood of the representations being settled under subsection (2), the Director General shall refer the representations to the Court for an award.

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[13] The power to refer the representation lies solely with the DGIR. The word 'shall' connotes a mandatory requirement for the DGIR to refer the representation to the Industrial Court.

E **[14]** This is in contrast to the unamended s 20(3) where the Minister in exercising his discretion 'may if he thinks fit' refer representations to the Industrial Court.

F **[15]** The Act has now provided a clear appeal process after an award is made by the Industrial Court. This is seen with the introduction of s 33C which reads as follows:

Appeal against an award to the High Court.

(1) If any person is dissatisfied with an award of the Court made under section
G 30 such person may appeal to the High Court within fourteen days from the date of receipt of the award.

(2) The procedure in an appeal to the High Court shall be the procedure in the Rules of Court 2012 [PU (A) 205/2012] for an appeal from a Sessions Court with such modifications as the circumstances may require.
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(3) In dealing with such appeals, the High Court shall have like powers as if the appeal is from the Sessions Court.

[16] The appeal process is to the High Court and the procedure for such
I appeal would be that of an appeal from the sessions court to the High Court.

[17] The amendment has removed the limited right to appeal on questions of law under s 33A of the unamended Act. Section 33A has now been deleted and replaced by s 33C.

[18] Having set out the applicable law, it is critical for us to determine this matter based on the current set of facts before us. What is critical are the timelines that come into play.

[19] It is not disputed that the appellants were terminated on 22 October 2020. They then went on to file their representations pursuant to s 20(1) of the Act to the DGIR within the 60 days of their dismissal. Although it was not clear from the records as to when exactly the representations were made, it is safe to presume that it was made within the statutory time frame of 60 days as stipulated in s 20(1A) of the Act. This effectively meant that the representations were still made in 2020, a date when the amendments had yet to come into force ('representation date'). The Minister referred their representation to the Industrial Court on 24 April 2021 ('referral date').

[20] It can be seen that the time frame between the representation date and referral date straddles between two critical timelines where different provisions of law operate.

[21] This is where the drafters of the Act have in their wisdom introduced s 35 in Act A1615, to cater for the current conundrum. It reads as follows:

> 35 Saving and transitional provisions
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> (1) Complaints made under section 8, disputes referred under subsection 9(1A), claims for recognition made under section 9, *representations for reinstatement made under section 20 of the principal Act*, and all proceedings commenced or awards made before the Industrial Court *in relation to a reference under* subsection 8(2A), *subsection 20(3)* and section 26 *before the coming into operation of this Act shall proceed and have effect as if the principal Act had not been amended by this Act*.
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> (2) All rules and regulations, forms, directions and letter of authorizations made, issued or granted under the principal Act shall, to the extent that the rules and regulations, forms, directions and letter of authorizations are consistent with the principal Act as amended by this Act, continue to be in force until such rules and regulations, forms, directions and letter of authorizations are revoked or amended.
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> (3) Any investigation, trial or proceedings done, taken or commenced under the principal Act immediately before the coming into operation of this Act, shall be dealt with as if the principal Act had not been amended by this Act.

[22] In essence, s 35 of Act A1615 states that where any representation for reinstatement is made under s 20 of the Act before the coming into force of the amended Act, it shall proceed under the unamended Act.

[23] If the representation for reinstatement was made before 1 January

2021 and the Minister refers it before 1 January 2021, there is no ambiguity. Likewise, if the representation and referral were made after 1 January 2021.

[24] If the scenario is similar to the present case where the representation for reinstatement was made before 1 January 2021 and the representation to the Industrial Court was made after 1 January 2021, by application of s 35 of Act A1615, the unamended Act is to apply.

[25] The determining factor is when the said representation for reinstatement was made to the Department of Industrial Relations under s 20 of the Act.

[26] Applying the facts to the above considerations, it is our view that it was proper for the Minister and not the DGIR to make the referral to the Industrial Court.

REASONING OF THE HIGH COURT

[27] The LHCJ reasoned as follows when he dismissed the preliminary objection:

> [1] Di hadapan mahkamah ini peguam responden membangkitkan pihak syarikat tidak boleh memfailkan rayuan sebaliknya perlu memfailkan semakan kehakiman atas keputusan Mahkamah Perusahaan. Kedua-dua kes ini dirujuk oleh Menteri kepada Mahkamah Perusahaan pada 22 Oktober 2020. Pindaan kepada Akta Perhubungan Perusahaan berkuatkuasa mulai 1 Januari 2021 di mana tiada lagi rujukan oleh Menteri. Seksyen 33C memperuntukkan rayuan terhadap keputusan Mahkamah Perusahaan. Seksyen 35 Akta Pindaan 1615 memperuntukkan:
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> > ... and all proceedings commenced or *awards* made before the Industrial Court in relation to a reference under subsection 8(2A), subsection 20(3) and section 26 *before the coming into operation of this Act* shall proceed and have effect as if the principal Act had not been amended by this Act.
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> Walau bagaimanapun awad dibuat selepas tarikh pindaan ini maka oleh itu saya berpendapat pihak yang tidak berpuas hati dengan keputusan Mahkamah Perusahaan hendaklah memfailkan rayuan ke Mahkamah Tinggi dan bukannya semakan kehakiman. Oleh itu proses yang diambil oleh syarikat adalah betul mengikut undang-undang.

[28] The LHCJ had made a factual error when he said the referral by the Minister to the Industrial Court was on 22 October 2020. That was the date on which the appellants were dismissed.

[29] It is our view that the LHCJ was also in error when he placed emphasis on the timing of the award. Section 35 of Act A1615 does not cater for a

situation where an award is made after the amended Act came into force.

[30] The LHCJ had therefore imported a provision that is not found in the saving and transitional provisions of Act A1615 and made a ruling that any challenge of an award after 1 January 2021 must be by way of an appeal.

[31] Instead, we emphasise again that the critical issue is the timing of the representation for reinstatement under s 20(1). If the said representation was made before the coming into force of the amended Act, the proceedings should be based on the unamended Act.

[32] As such, we find that the LHCJ was in error when he ruled that the appeal was properly laid before the High Court.

[33] The apex courts have consistently held that the award of the Industrial Court, which is a public authority exercising quasi-judicial functions, cannot escape judicial interference and supervision of the High Court by way of judicial review.

[34] Authorities on this point are replete (see *Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 3 MLJ 145; [2010] 5 CLJ 865*, Sabah Banking Employees' Union v Sabah Commercial Banks' Association* [1989] 2 MLJ 284; [1989] 2 CLJ 135; [1989] 1 CLJ Rep 148*, Equatorial (M) Sdn Bhd v National Union Of Hotel, Bar & Restaurant Workers & Anor* [1984] 1 MLJ 363; [1984] 2 CLJ 6).

[35] Therefore, by applying judicial precedent and the provisions of s 35 of Act A1615, any challenge against an award of an Industrial Court must be by way of a judicial review.

FINDINGS ON THE PRELIMINARY ISSUE

[36] It is our finding that the matter was erroneously brought before the High Court by way of an appeal. The LHCJ fell into error when he entertained the appeal and went on to set aside the Industrial Court award. On this basis alone, we find that the appeals ought to be allowed and the decision of the LHCJ is set aside. The award of the Industrial Court is reinstated.

[37] Given this finding, we do not find it necessary to consider the substantive appeal.

[38] The appeals are therefore allowed with costs of RM10,000 to be paid to appellants subject to allocatur.

Appeals dismissed.

Reported by K Selvaraju